

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June 17, 2001 and Commission Rule 133.305 titled Medical Dispute Resolution - General and 133.308 titled Medical Dispute Resolution by Independent Review Organizations, the Medical Review Division assigned an IRO to conduct a review of the disputed medical necessity issues between the requestor and the respondent. The dispute was received on 04-08-04.

The Medical Review Division has reviewed the IRO decision and determined that **the requestor prevailed** on the issues of medical necessity. Therefore, upon receipt of this Order and in accordance with §133.308(r)(9), the Commission hereby orders the respondent and non-prevailing party to **refund the requestor \$460.00** for the paid IRO fee. For the purposes of determining compliance with the order, the Commission will add 20 days to the date the order was deemed received as outlined on page one of this order.

In accordance with §413.031(e), it is a defense for the carrier if the carrier timely complies with the IRO decision.

Based on review of the disputed issues within the request, the Medical Review Division has determined that **medical necessity was the only issue** to be resolved. The therapeutic activities, therapeutic exercises, office visits, neuromuscular re-education, gait training, activities of daily living instruction, educational supplies and booklets, review of computer data, medical conferences and analysis of computer data for dates of service 05-16-03 through 06-27-03 **were** found to be medically necessary. Services rendered on dates of service 07-16-03, 07-17-03 and 07-18-03 **were not** found to be medically necessary. The respondent raised no other reasons for denying reimbursement for the above listed services.

This Findings and Decision is here-by issued this 29<sup>th</sup> day of June 2004.

Debra L. Hewitt  
Medical Dispute Resolution Officer  
Medical Review Division

On this basis, and pursuant to §§402.042, 413.016, 413.031, and 413.019 of the Act, the Medical Review Division hereby ORDERS the respondent to pay the unpaid medical fees in accordance with the fair and reasonable rate as set forth in Commission Rule 133.1(a)(8) plus all accrued interest due at the time of payment to the requestor within 20 days of receipt of this order. This Order is applicable to dates of service 05-16-03 through 06-27-03 in this dispute.

The respondent is prohibited from asserting additional denial reasons relative to this Decision upon issuing payment to the requestor in accordance with this Order (Rule 133.307(j)(2)).

This Order is here-by issued this 29th day of June 2004.

Roy Lewis, Supervisor  
Medical Dispute Resolution  
Medical Review Division  
RL/dlh

## NOTICE OF INDEPENDENT REVIEW DECISION

**Date:** June 14, 2004

**MDR Tracking #:** M5-04-2484-01

**IRO Certificate #:** 5242

\_\_\_ has been certified by the Texas Department of Insurance (TDI) as an independent review organization (IRO). The Texas Workers' Compensation Commission (TWCC) has assigned the above referenced case to \_\_\_ for independent review in accordance with TWCC Rule §133.308 which allows for medical dispute resolution by an IRO.

\_\_\_ has performed an independent review of the proposed care to determine if the adverse determination was appropriate. In performing this review, relevant medical records, any documents utilized by the parties referenced above in making the adverse determination and any documentation and written information submitted in support of the appeal was reviewed.

The independent review was performed by a Chiropractic reviewer who has an ADL certification. The reviewer has signed a certification statement stating that no known conflicts of interest exist between him or her and any of the treating physicians or providers or any of the physicians or providers who reviewed the case for a determination prior to the referral to for independent review. In addition, the reviewer has certified that the review was performed without bias for or against any party to this case.

### **Submitted by Requester:**

- Notice of IRO assignment and prepayment of invoice which includes list of disputed dates of service and listing of who treated, saw or evaluated the claimant.
- 5/17/04 note from \_\_\_ which is a response to the peer review of 4/28/04.
- 5/2/04 rebuttal letter to the peer review of 4/28/04.
- Chiropractic modality peer review report of 4/28/04.
- Multiple daily notes from 10/9/02 through 4/28/04 from \_\_\_
- 1/26/98 note from an unknown provider, which lists a clinical history of the \_\_\_ date of injury.
- Multiple TWCC-73 reports which are undated, yet have been submitted by \_\_\_ the latest treating chiropractor of record.
- Multiple patient face sheets which run from essentially 5/7/03 through 4/17/04.
- Several documents from \_\_\_ dated 3/20/03 and 2/14/03.
- FCE report dated 11/14/03
- Multiple diagnostic work ups including a lumbosacral myelogram of 9/4/02, MRI of the lumbosacral spine with and without contrast of 7/26/02, an electrodiagnostic study of 6/14/02, CT of the lumbar spine of 9/4/02, an MRI of the lumbosacral spine with and without contrast of 1/3/02, a needle EMG/NCV report of 10/23/00, current perception threshold testing of 8/1/01, MRI of the lumbar spine report of 9/15/00, plain film x-ray studies of 3/17/00 involving the cervical spine, lumbar spine plain film x-ray report of 3/17/00, lumbar discogram report of 1/11/99, CT scan of the lumbar spine of 1/11/99 which was done in the post discogram setting, lumbar CT scan report of 3/13/98, cervical spine, thoracic spine and lumbar spine plain film x-rays of 1/30/98.
- Multiple medical doctor follow up visit notes from \_\_\_ dated 11/26/02 through approximately 4/27/04.
- 12/23/03 note from \_\_\_
- Behavioral evaluation report of 10/7/03
- Note from \_\_\_ of 11/25/03
- CT scan of the lumbar spine report of 10/7/03.

- Note from \_\_\_\_ of 10/7/03.
- Note from \_\_\_\_ of 8/26/03.
- Operative note dated 2/5/03 at which time the claimant underwent posterior lumbar fusion with instrumentation at the L4/5 level.
- Follow up visit from \_\_\_\_ of 2/21/03.
- Initial chiropractic medical report of 10/9/02.
- Multiple subsequent medical reports from the chiropractor dated 2/24/03, 4/18/03, 5/19/03, 6/27/03, 8/1/03.
- Follow up note from \_\_\_\_ of 6/30/03.
- Peer review report of 5/7/03.
- Follow up report from \_\_\_\_ of 2/21/03.
- Several laboratory evaluations and prescriptions dated in November 2002.
- Note from \_\_\_\_ of 6/20/02.
- Notes from \_\_\_\_ of 12/6/01, 7/24/01, 2/23/01.
- Operative note involving the claimant's first surgery involving the lumbar laminectomy at L4/5 with bilateral foraminotomies on 2/7/01.
- Note from \_\_\_\_ of 10/31/00.
- Lumbar epidural steroid injection report of 10/6/00.
- Note from \_\_\_\_ of 10/2/00.
- TWCC-69 form and report dated 8/20/99 from \_\_\_\_ stating the claimant was at MMI as of 8/22/99 with 6% whole person impairment rating. This of course was prior to the date of the second surgery.
- Follow up from \_\_\_\_\_ dated 3/11/99.
- Peer review report of 4/28/04. (Please keep in mind that some of this documentation may be repetitive)
- Letter of medical necessity dated 5/7/03 from \_\_\_\_.
- Change of treating physician request dated 9/23/02 from the claimant.
- A list of documents from URA. This list includes the disputed dates of service, a listing of the multiple physicians and providers this claimant has seen, and billing records which run from approximately 7/22/03 through 12/23/03. There were also multiple explanation of benefits documents provided for review.

**Submitted by Respondent:**

- None submitted.

**Clinical History**

It appears the claimant suffered occupational injury to his low back while working for the \_\_\_\_ on \_\_\_\_.

The problem appeared to have come on over time and was more of an occupational injury rather than an injury that was due to any one specific event. The claimant has received extensive amounts of conservative treatment and ended up undergoing a lumbar spine surgery in February 2001 as well as a fusion at the same level, which was L4/5, on 2/5/03. The claimant appeared to initiate some postoperative rehabilitation on 2/24/03 with \_\_\_\_.

**Requested Service(s)**

Please review and address if the services rendered from 5/16/03 through 7/18/03 to include therapeutic activities and exercises, office visits, neuromuscular re-education, gait training, activities of daily living instruction, educational supplies and booklets, review of computer data, medical conferences, and analysis of computer data were medically necessary.

**Decision**

I disagree with the carrier and find that the services in the dispute which were rendered through 6/27/03 would be considered medically necessary.

I agree with the carrier and find that the services in dispute rendered on 7/16/03, 7/17/03, and 7/18/03 were not medically necessary.

**Rationale/Basis for Decision**

There were multiple complications involving this case. This was the claimant's second surgery and he was 53 years of age at the time of the second surgery. The claimant also has Hepatitis C, which results in increased fatigue and other problems, which would be considered to be complicating factors involving any type of rehabilitation program. The claimant was managed fairly well. \_\_\_, the treating surgeon, kept recommending more physical therapy mainly to include bike exercises and treadmill work. The highly evidence based Official Disability Guidelines recommend about 34 visits over a 16 week period meaning that at 16 weeks from the initiation of physical therapy on 2/24/03, the time frame would be 6/17/03 and this is in accordance with the strict recommendations of the guidelines. In this particular instance and for the above mentioned reasons, I feel that some leeway should be considered for this claimant. The claimant did not really begin any active treatment until April 2003. In fact, the claimant had undergone a documented 12 visits of active sessions of treatment as of 5/19/03 and I believe he would be entitled to more active care and the preponderance of the disputed dates of service involve active care as well as other services involved with the routine management of the claimant. There was a lapse in treatment or the time frame of disputed services between 6/27/03 and 7/16/03. Even when considering the various complicating factors, it would not be appropriate to continue in the same line of treatment beginning on 7/16/03 because it was obvious that the claimant was having difficulties and a more than sufficient amount of treatment had been rendered as of 6/27/03. \_\_\_ stated that he wanted a repeat MRI performed as of 7/9/03 due to complicating factors. Therefore, it was obvious that the claimant's condition needed to be re-evaluated. It should also be mentioned that the amount of post operative rehabilitation exceeded 50 visits through July 2003 and this would be considered excessive even when considering the complications as well as the recommendations of the highly evidence based Official Disability Guidelines. Also, by 6/27/03 the claimant had undergone approximately 45 visits of treatment and the documentation revealed that his condition was somewhat deteriorating and needed to be re-evaluated. This would make further treatment along the same lines not reasonable or medically necessary as the claimant could have done just as well at this point on a home based exercise program to include walking and home based bicycle activities. This is not to say that further treatment such a work hardening program was not warranted; however, the claimant has had sufficient amounts of care given that particular phase of the injury at that time.